

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

STEVES AND SONS, INC.,

Plaintiff,

V.

JELD-WEN, INC.,

Defendant.

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

Civil Action No. 3:20-CV-00098-REP

JELD-WEN'S MEMORANDUM IN SUPPORT OF MOTION TO FILE UNDER SEAL

JELD-WEN, Inc. (“JELD-WEN”), pursuant to Rule 5 of the Local Civil Rules, respectfully moves the Court for an order allowing JELD-WEN to file its Submission Requested By The Court During The April 22, 2020 Telephonic Conference (“Submission”) under seal. In support of this motion, JELD-WEN states:

Local Rule 5(c), Section 1 – Non-confidential description of the material filed under seal

The material filed under seal consists of specific data in the Submission. The information discloses the number of doorskins Steves has ordered and obtained from JELD-WEN, the number of doorskins Steves has ordered, the number of doorskins Steves has received from foreign suppliers, the number of doorskins JELD-WEN has produced, and JELD-WEN's production capacity. This information constitutes commercially sensitive confidential or trade secret information that, if disclosed to the public, would cause competitive harm as described in the Protective Order and breach the terms of the Supply Agreement. The data and the exhibits have

been designated as “Highly Confidential” pursuant to the Stipulated Protective Order entered in this matter (ECF No. 25).

Local Rule 5(c), Sections 2 and 3 – A statement why sealing is necessary, references to governing case law, analysis of the appropriate standard, and a description of how the standard has been satisfied

Sealing the referenced documents is necessary because the documents are designated Highly Confidential per the Stipulated Protective Order. Sealing of information about Steves’ past purchases, planned orders, JELD-WEN’s production, and JELD-WEN’s production capacity is required because the information is commercially sensitive. No other procedure will suffice, because once this information is made public it cannot be retracted.

Documents should be sealed when a party’s interest in keeping the information contained therein confidential outweighs the right of public access to judicial documents. *See, e.g., Stone v. Univ. of Maryland Med. Sys. Corp.*, 855 F.2d 178 (4th Cir. 1988); *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000). The United States Court of Appeals for the Fourth Circuit has directed that district courts should consider the following factors when determining whether to exercise their discretion to seal documents: (1) “whether the records are sought for improper purposes, such as promoting public scandals or unfairly gaining a business advantage;” (2) “whether release would enhance the public’s understanding of an important historical event; and” (3) “whether the public has already had access to the information contained in the records.” *Va. Dept. of State Police v. Wash. Post*, 386 F.3d 567, 575 (4th Cir. 2004).

Here, there could be an “unfair business advantage” gained by any party who had access to Steves’ or JELD-WEN’s trade secret and confidential information. The public has never had access to the information at issue and it is routinely kept in confidence in the course of business. These are appropriate grounds for sealing.

Local Rule 5(c), Section 4 – Statement as to the period of time the party seeks to have the matter maintained under seal

JELD-WEN requests that the documents designated as “Highly Confidential” and discussions thereof be filed under seal, pursuant to the Stipulated Protective Order (ECF No. 25), entered February 20, 2020.

JELD-WEN believes that its trade secret and confidential information should remain permanently sealed in the absence of a ruling that the information is not confidential. As reflected in Steves’ motion to seal, JELD-WEN presumes Steves harbors a similar belief about its information.

JELD-WEN’s grounds for requesting that its disclosures about Steves’ past purchases and planned orders for doorskins and JELD-WEN’s past production and production capacity be filed under seal are that the information is highly confidential and commercially sensitive information to which the public has not had access and that Steves or JELD-WEN would be harmed if the public did have access to such information.

The documents sought to be filed under seal are being filed electronically with the Court contemporaneously, as required by Local Civil Rule 5. Redacted versions of the documents are being filed publicly.

Dated: April 23, 2020

Respectfully submitted,

JELD-WEN, Inc.

By counsel

/s/ Brian C. Riopelle

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of April 2020, the following counsel of record have been served using the CM/ECF system, which will then send a notification of such filing (NEF) to the registered participants as identified on the NEF to receive electronic service, including:

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